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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 539.

STEPHEN CALLAGHAN, PERCIVAL E. JACKSON and WILLIAM M. GREVE, individually and as trustees in bankruptcy and as trustees in reorganization of ALLIED OWNERS CORPORATION,

Petitioners,

against

RECONSTRUCTION FINANCE CORPORATION,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITIONERS' REPLY MEMORANDUM.

Point II of the respondent's brief is devoted largely to a discussion of facts bearing upon the question of the reasonableness of the amounts awarded to petitioners by the District Court and by the Circuit Court of Appeals.

It is submitted that the only question upon this appeal is one of law, namely, the construction of Section 77B of the Bankruptcy Act in its relation to Section 48 of the Act. That was the only question considered in the petitioners'

brief herein. It was assumed by the petitioners that if this Court should determine that the construction of the statute adopted by the Circuit Court of Appeals was erroneous, it would remit the proceeding to the Court below for determination of the amounts to be awarded.

It is, therefore, submitted that Point II of respondent's brief should be disregarded. If, however, this Court should decide that the Court below erred in its construction of the statute, and should also undertake to determine the reasonableness of the allowances to be made, the petitioners respectfully request that they be given an opportunity to submit a supplemental brief, solely upon the question of the reasonableness of the amounts to be allowed, in view of the services rendered, at such time as the Court may fix.

In Point II of the respondent's brief (on page 23), it is said that "the petitioners have sought to convey the impression that the construction of the Bankruptcy Act urged by the respondent has resulted in a grossly inadequate award". Such is the petitioners' belief. Their belief finds support, in part at least, in the opinion of the Court below wherein it is said that "we should allow a substantially larger compensation if we were at liberty to disregard Section 48 (a)."

In Point II of its brief, the respondent, in an effort to minimize the value to be placed upon the trustees' services in the prior bankruptcy proceeding, has set forth (particularly in the footnote on pages 23 and 24) matters not in the record purporting to be facts as to other activities and compensation in other matters of one or more of the trustees; and included therein are matters purporting to have been brought out upon hearings before the so-called Sabath Committee, as reported in the metropolitan newspapers. It

is submitted that such matters, not appearing in the record herein, should be wholly disregarded. This is true, also, of the references to matters in the public press (found in the footnote on page 32 of respondent's brief) apparently inserted to create an atmosphere unfavorable to petitioners.

On page 25 of respondent's brief (under Point II) it is said that much of the petitioners' application for compensation herein "relates to matters that were not completed until after the termination of the bankruptcy proceeding"; and that the petitioners, who are also the trustees in the proceeding under Section 77B, will be compensated in that proceeding. The prior bankruptcy proceeding and the proceeding under Section 77B are, however, distinct proceedings; and the statute prescribes that the prior bankruptcy court shall fix the reasonable allowances for services rendered by trustees in the prior proceeding. The trustees may, therefore, be properly compensated in the 77B proceeding only for services rendered by them in that proceeding. If they asked for more therein (including compensation for services in a prior independent proceeding), they would undoubtedly be met with the valid objection that they could then be compensated only for services rendered in the 77B proceeding.

On pages 29 and 30 of respondent's brief (and also in Point I, subdivision B), it is said, in substance, that the construction of the statute contended for by the petitioners would tend to defeat the purpose of Congress to check excessive fees in bankruptcy proceedings. Instead of tending to defeat such purpose, the construction here contended for is in aid and furtherance thereof. Under this construction, there is a double check upon the reasonableness of the allowances to prior trustees, first, in the prior proceeding

(where the determination of the Court may be reviewed upon appeal); and, secondly, in the proceeding under Section 77B, where the judge must also pass upon the reasonableness of the allowances, in the light of the pending reorganization, and his determination may likewise be reviewed upon appeal.

Respectfully submitted,

PERCIVAL E. JACKSON,
Counsel for Petitioners.